IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

W.P. No. 164 of 2001 (S/S)

Smt. Bhagwati Thapa …….. Petitioner

Versus

Regional Joint Director of Education,
Garhwal Mandal, Pauri & others ……. Respondents

Mr. Rajendra Dobhal, learned counsel for the petitioner.
Mr. Paresh Tripathi, learned counsel for respondent No. 4.

Hon'ble P.C. Verma, A.C.J.

This writ petition has been filed by the petitioner seeking a writ of certiorari to quash the impugned order dated 17.2.2001 passed by respondent No. 1, which is contained in Annexure 4 to the writ petition, whereby respondent No. 4 has been promoted on the post of Lecturer in Sociology from the post of CT Grade Teacher.

Heard Mr. Rajendra Dobhal, learned counsel for the petitioner and Mr. Paresh Tripathi, learned counsel for the respondent No. 4.

Learned counsel for the petitioner submitted that the vacancy of the post of Lecturer fell on 1st July, 1999 on account of retirement of Smt. Chandra Rawat on 30.6.1999 and on that date, the respondent No. 4 was not eligible to be promoted as he did not possess the qualification of M.A. in Sociology on the day of occurrence of the vacancy. It was further stated by the learned counsel for the petitioner that only the petitioner was M.A. in Sociology on 1st July, 1999 and therefore, she should have been promoted. Therefore, it was stated that the promotion of respondent No. 4 by the impugned order dated 17.2.2001 is dehors the rules and is liable to be set aside. In this connection, learned counsel for the petitioner relied on a judgment of the Apex Court reported in 2002(1) AWC 421 (SC) in the case of State of U.P. Vs. Vijay Kumar Mishra, relevant para 7 of which reads as under:

"The position is fairly well settled that when a set of eligibility qualifications are prescribed under the Rules and an application, who does not possess the prescribed qualification for the post at the time of submission of application or by the cut-off date, if any, described under the Rules or stated in the advertisement, is not eligible to be considered for such post. It is relevant to note here that in the Rules or in the advertisement, no power was vested in any authority to make any relaxation relating to the prescribed qualifications for the post. Therefore, the case of a candidate who did not come within the zone of consideration for the post could not be compared with a candidate who possess the prescribed qualifications and was considered and appointed to the post. Therefore, the so-called confession made by the officer in the Court that persons having lower merit than the respondent have been appointed as S.D.I. (Basic), having been based on misconception is wholly irrelevant. The learned single Judge clearly erred in relying on such a statement for issuing the direction for appointment of the respondent. The Division Bench was equally in error in confirming the judgment of the learned Single Judge. Thus, the judgment of the learned Single Judge as confirmed by the Division Bench is unsustainable and has to be set aside."

Law laid down by the Apex Court in the aforesaid paragraph is not applicable in the present case as no doubt Rule 14 provides that all the teachers working in Trained Graduate Grade of CT Grade, if any, who possess the qualifications, prescribed for the post and have completed 5 years continuous regular service as such **on the first day of the year of recruitment** shall be considered for promotion to the Lecturers Grade. Section 2(1) of the U.P. Secondary Education (Services Selection Board) Act, 1982 defines the year of recruitment means a period of 12 months commencing from 1st July of the

Calendar year meaning thereby the candidates who are to be considered must possess the qualification for being promoted on the post of Lecturer and must be qualified on the first day of July of the Calendar year.

The respondent No. 4 had appeared in the examination of M.A. in Sociology, final year paper of which ended on 31st May, 1999. On that day, it appears that on the request of the respondent No. 4, the papers were examined and the Registrar of the University wrote to the Committee of Management that respondent No. 4 has passed M.A. on 30th June, 1999.

Therefore, it cannot be said that respondent No. 4 was not eligible on the 1st July, 1999 in view of the letter of the Registrar of University to the Principal and Manager informing both the authorities that respondent No. 4 has passed the examination of M.A. in Sociology on 31st May, 1999.

Therefore, the impugned order dated 17.2.2001 by which the respondent No. 4 has been promoted does not suffer from any infirmity or illegality.

In view of the aforesaid, the writ petition is devoid of merit and is, hereby, dismissed. No order as to costs.

(P.C. Verma, A.C.J.)

Dt. 26.06.2004
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